FILED

JUN 20 2003

CATHY A. CATTERSON
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff - Appellant, v. ROBERT L. REEVES & ASSOCIATES, a Professional Corporation, Defendant - Appellee.	No. 02-55928 D.C. No. CV-00-10515-DT MEMORANDUM*
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff - Appellant, v. ROBERT L. REEVES & ASSOCIATES, a Professional Corporation, Defendant - Appellee.	No. 02-56179 D.C. No. CV-00-10515-DT

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Appeal from the United States District Court
for the Central District of California
Dickran M. Tevrizian, District Judge, Presiding

Argued and Submitted June 3, 2003
Pasadena, California

Before: HALL, THOMAS, and PAEZ, Circuit Judges.

The EEOC brought this Title VII action against Reeves & Associates, alleging pregnancy discrimination and sexual harassment against twelve female employees. In three separate orders, the district court granted summary judgment for Defendant on both claims. It also awarded Defendant $363,075.21 in attorneys' fees. We have jurisdiction pursuant to 28 U.S.C. § 1291, and, after conducting a *de novo* review of the record, we reverse the district court's grant of summary judgment, vacate its award of attorneys' fees, and remand for further proceedings.

Because the parties are familiar with the history and facts of this case, we do not recount them here.

I.

Viewing the record in the light most favorable to the EEOC, we conclude that the EEOC presented sufficient evidence of Saez's satisfactory work performance and the discriminatory circumstances surrounding her termination to

establish a prima facie case of pregnancy discrimination. *See Aragon v. Republic Silver State Disposal, Inc.*, 292 F.3d 654, 659–60 (9th Cir. 2002). Further, although Reeves may have articulated non-discriminatory reasons for Saez's termination, the EEOC has presented sufficient, specific evidence to allow a reasonable juror to find that those reasons were a pretext for pregnancy discrimination. *Id.* at 661; *Chuang v. Univ. of Cal. Davis, Bd. of Trs.*, 225 F.3d 1115, 1127–29 (9th Cir. 2000). In addition to Saez's own statements that she had never refused to make or complained about making photocopies, other employees confirmed Saez's statements and testified that she was in fact a good worker. Because there are genuine triable issues of fact, summary judgment was inappropriate on this claim.

II.

With regard to the EEOC's hostile work environment claim, the evidence in the record, also viewed in the light most favorable to the EEOC, shows that Reeves' conduct was widely known throughout the firm and that the claimants felt uncomfortable around Reeves, tried to avoid him, and even left the firm as a result. This evidence would allow a reasonable juror to find that the claimants subjectively believed that they worked in a hostile and abusive environment that was permeated with sexual harassment. *See Brooks v. City of San Mateo*, 229

F.3d 917, 923–24 (9th Cir. 2000); *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21–23 (1993).

Further, a reasonable woman in the claimants' positions could have believed that Reeves' sexual jokes, comments, leering, and offensive touching were sufficiently severe or pervasive to alter the conditions of their employment. Evidence of Reeves' conduct, combined with his position within the firm as the partner with final decision-making authority in all matters concerning the firm, is sufficient to permit a reasonable juror to conclude that Reeves created an abusive working environment. *See Ellison v. Brady*, 924 F.2d 872, 878–80 (9th Cir. 1991) ("It is the harasser's conduct which must be pervasive or severe, not the alteration in the conditions of employment."); *Harris*, 501 U.S. at 23–25. Thus, there is a genuine issue of material fact as to whether Reeves sexually harassed his female employees and whether this conduct created a hostile work environment. *See Burrell v. Star Nursery, Inc.*, 170 F.3d 951, 957 (9th Cir. 1999). Summary judgment was therefore inappropriate on this claim as well.

III.

In light of our conclusion that there are material issues of fact regarding the EEOC's pregnancy discrimination and sexual harassment hostile work environment claims, we vacate the district court's award of attorneys' fees.

REVERSED and REMANDED for further proceedings.